



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Frauds. Uniform Sales Act § 4(1). By inference from the case of goods this is so although the chose in action was to be acquired in the future, Uniform Sales Act § 4(2); *R. & L. Co. v. Metz* (1916) 175 App. Div. 276, 160 N. Y. Supp. 145, *aff'd* (1916) 219 N. Y. 556, 114 N. E. 1082, or did not exist when the contract was made. Uniform Sales Act § 4(2); see Williston, *Sales* (1909) § 55. The court in the instant case reaches the decision by arguing by analogy from the former New York rule that a contract for non-existent goods is outside the Statute, overlooking the abrogation of that rule. Sales Act § 4(2); *Warren Chemical and Mfg. Co. v. Holbrook* (1890) 118 N. Y. 586, 23 N. E. 908. Nevertheless the result seems correct. Definitions of a chose in action agree that it is a claim enforceable by judicial proceedings. 2 *Words and Phrases* (1904) 1144. In the instant case there is neither a contract to sell or assign nor a sale or assignment of any legal claim. There is merely the creation of a claim against the promisor that he shall pay through his agent or procure another to pay. The formation of a contract is not within the Statute. It is possible to conceive of the formation of a contract as the grant or transfer of a chose in action from the promisor to the promisee. This would, however, put every contract within the Statute of Frauds, and does not accord with the accepted notions of the common law which distinguish between the creation and transfer of a claim.

TORTS—INFANTS—ACTION FOR PRE-NATAL INJURY.—The plaintiff's mother, while walking along a public sidewalk during pregnancy, fell through a coal hole which had been negligently left open by the defendant. As a consequence the plaintiff, while yet unborn, was injured for life. *Held*, Cardozo, J., dissenting, for the defendant. *Drobner v. Peters* (1921) 232 N. Y. 220, 133 N. E. 567.

This decision reverses the Appellate Division and establishes for the first time the New York law on the question, following the weight of authority elsewhere. See (1913) 13 COLUMBIA LAW REV. 359. The decision in the lower court, nevertheless, was hailed as "an interesting and commendable development of the law." See (1921) 21 COLUMBIA LAW REV. 199. The science and humanitarianism of this age can regard the stand of the Court of Appeals as surprising and more than conservative. Cf. Pound, *Mechanical Jurisprudence* (1908) 8 COLUMBIA LAW REV. 605; *Hynes v. New York Central R. R.* (1921) 231 N. Y. 229, 131 N. E. 898, discussed in (1921) 21 COLUMBIA LAW REV. 827, and in (1921) 35 Harvard Law Rev. 68; *Katz v. Kadans & Co.* (Ct. of App. 1922) 66 N. Y. L. J. 1651.

TORTS—NEGLIGENCE—PROXIMATE CAUSE.—The defendant's train, negligently operated, struck an automobile at a crossing and threw it against a switch stand whereby the track was turned so that the train ran on a sidetrack and struck some cars. As a result, the plaintiff's decedent, a passenger, was thrown from her seat and injured. *Held*, that the trial court was right in directing a verdict for the defendant, as the defendant's negligence was not the proximate cause of the injury. *Engle v. Director General of Railroads* (Ind. 1921) 133 N. E. 138.

Negligence in the abstract is non-existent. See *Thomas v. Quartermaine* (1887) L. R. 18 Q. B. D. 685, 688. The elements of negligence are a duty to use due care, owed by the defendant to the plaintiff, failure to perform that duty, and injury resulting to the plaintiff. See *Faris v. Hoberg* (1893) 134 Ind. 269, 274, 33 N. E. 1028. For a recovery the injury must also be the natural and probable result of the negligence. *Douglass v. Railroad Co.* (1904) 209 Pa. St. 128, 58 Atl. 160. But it need not be the inevitable result. *Burk v. Creamery Package Mfg. Co.* (1905) 126 Iowa 730, 102 N. W. 793. Yet the specific injury need not have been foreseen, if some resulting injury might reasonably have been anticipated. *Hill v. Winsor* (1875) 118 Mass. 251. Nor will the intervention of an unconscious

instrument relieve the wrongdoer from liability, *Hammil v. Pennsylvania R. R.* (1894) 56 N. J. L. 370, 29 Atl. 151; nor the intervention of a responsible agent, *Southern Ry. Co. v. Webb* (1902) 116 Ga. 152, 42 S. E. 395, unless acting in a manner not reasonably to have been anticipated. *Perry v. R. R. Co.* (1881) 66 Ga. 746. Where two persons are concurrently negligent, recovery may be had against either. *McClellan v. St. Paul etc. Ry. Co.* (1894) 58 Minn. 104, 59 N. W. 978. In the instant case the court does not make plain what it means by negligence. If there was no negligence toward the plaintiff, clearly there can be no recovery. If there was such negligence, it is a question of fact for the jury whether it was the proximate cause of the injury, *Gudfelder v. Ry. Co.* (1904) 207 Pa. St. 629, 57 Atl. 70; unless the facts are undisputed and only one inference is to be drawn from them. See *Gudfelder v. Ry. Co.*, *supra*, 636. The instant case, it is submitted, should not have been taken from the jury.

TRADE UNIONS—INJUNCTIONS—EMPLOYERS ENJOINED FROM BREACH OF CONTRACT.—The plaintiff labor union contracted with the defendant employers' association on May 29, 1919. The contract provided for the "week-work" system of employment and a reduction of hours, and was to remain in force until June 1, 1922. On Oct. 25, 1921 the defendant association passed a resolution in violation of the terms of the contract. Upon a motion to enjoin the defendant association from conspiring to violate the contract of May, 1919, *held*, the plaintiff was entitled to an injunction. *Schlesinger v. Quinto* (Sup. Ct. Sp. T. 1922) 66 N. Y. L. J. 1272.

Courts of equity have customarily enforced contracts between employers and employees, or organizations representing the employees. Unions have been enjoined from interfering with the contract relationship existing between employer and employees. *Hitchman Coal Co. v. Mitchell* (1917) 245 U. S. 229, 38 Sup. Ct. 65; *Booth & Bro. v. Burgess* (1906) 72 N. J. Eq. 181, 65 Atl. 226; see (1920) 20 COLUMBIA LAW REV. 696. Equity courts have enjoined the unincorporated representatives of employees from conspiring to interfere with the contractual relationship of employer and individual employee. *Reynolds v. Davis* (1908) 198 Mass. 294, 84 N. E. 457. Also courts have enjoined labor unions from breaking a contract made between employers and the union. *Barnes v. Berry* (C. C. 1907) 156 Fed. 72. Under the doctrine of mutuality of remedy, therefore, the labor unions and the employees are entitled to the same remedy against the employers. Attempts have been made by statute to prohibit the use of injunctions in labor disputes. *Ariz. Rev. Stat.* (1913) § 1464; *Ore., Laws* 1919, c. 346. But such statutes have generally been declared unconstitutional, *Truax v. Corrigan* (1921) 42 Sup. Ct. 124; see (1922) 22 COLUMBIA LAW REV. 252; *Bogni v. Perotti* (1916) 224 Mass. 152, 112 N. E. 853; *contra*, *Greenfield v. Central Labor Council* (Ore. 1920) 192 Pac. 783; or have not effectually prevented courts from continuing to grant injunctions. *Central Labor Council v. Heitkemper* (1920) 99 Ore. 1, 192 Pac. 765. The instant case seems plainly sound if there was an existing contract between the employers and the labor union on Oct. 25, 1921, and a conspiracy by the defendant association to cause a breach thereof. The plaintiff would be entitled to equitable relief on the well-established grounds of inadequacy of damages at law. The decision should silence one of the objections of labor unions to the use of the injunction in labor disputes, as it demonstrates the mutuality of relief for both employer and employee.

TRIALS—QUOTIENT VERDICT.—In a negligence action each juror set down an estimate of the amount the plaintiff ought to recover, and the average of these was adopted as the verdict. *Held*, for the plaintiff. As there was no agreement that